

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti11/22/21
JAUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
SAUDY GUERRERO,

Petitioner,

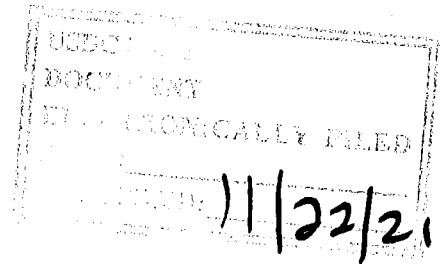
v.

UNITED STATES OF AMERICA,

Respondent.
-----X**ORDER**

19 CV 4130 (VB)

S11 14 CR 768-9 (VB)



By Order dated October 18, 2021, the Court denied petitioner Saudy Guerrero's Rule 59(e) motion to alter or amend judgment because the motion failed to raise any new evidence or law that would alter or impact the Court's prior decision to deny Guerrero's Section 2255 motion.

On November 10, 2021, Guerrero filed a letter requesting that the Clerk accept for filing two documents—both dated October 2, 2021, and received by the Clerk on October 13, 2021—that Guerrero had previously submitted in further support of his Rule 59(e) motion, but which had been rejected by the Clerk because they bore an incorrect civil docket number. (Docs. ##38, 39, 40 in case no. 19cv4130). That request is GRANTED, and the earlier-submitted documents are accepted for filing as timely filed.

In combination, these two documents argue that Guerrero's Section 924(c) conviction should be set aside in light of the Supreme Court's decision in United States v. Davis, 139 S. Ct. 2319 (2019), and that Guerrero's attorney failed to file an appeal on his behalf, thereby denying him effective assistance of counsel. Although the Court did not have the benefit of these two documents at the time it denied Guerrero's Rule 59(e) motion, the Court has now carefully reviewed both documents. Having done so, the Court concludes that nothing in these two documents would have changed or altered the Court's decision to deny Guerrero's Rule 59(e) motion. Thus, the Court reaffirms that Guerrero's Rule 59(e) motion is DENIED.

As petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability will not issue. 28 U.S.C. § 2253(c)(2).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Chambers will mail a copy of this Order to petitioner at the following address:

Saudy Guerrero, Reg. No. 62424-018

FCI Gilmer

Federal Correctional Institution

P.O. Box 6000

Glenville, WV 26351

Dated: November 22, 2021

White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent L. Briccetti", written over a horizontal line.

Vincent L. Briccetti

United States District Judge